IN THE UNITED STATES PATENT AND TRADEMARK OFFICE ATTENTION: OFFICE OF PATENT LEGAL ADMINSTRATION	*Application Number*	10/522,068
	Filing Date	1/21/2005
	First Named Inventor	Haydn N.G. WADLEY
	Group Art Unit	1775
	Examiner Name	A. Austin
	Attorney Docket Number	3053.138.US

Title of the Invention: METHOD FOR MANUFACTURE OF CELLULAR MATERIALS AND STRUCTURES FOR BLAST AND IMPACT MITIGATION AND RESULTING STRUCTURE

REQUEST FOR RECONSIDERATION/REVIEW OF DECISION ON PETITION FROM RESTRICTION REQUIREMENT UNDER 37 CFR § 1.144

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is a request for reconsideration of the Decision mailed September 22, 2008, denying Applicant's petition requesting withdrawal of the restriction requirement in the present application. **In the event that reconsideration is denied or does not result in withdrawal of the erroneous restriction requirement, Applicants request that jurisdiction over this issue be transferred to the Office of Patent Legal Administration for review**.

PERTINENT FACTS

1) The restriction requirement made in the Office action of January 10, 2007 requires an election between claims 1-35 directed to a structure, and claims 36-39 directed to a method of constructing the structure as set forth in claims 1-35. Reconsideration of the restriction requirement was requested in the responses filed May 9, 2007 and December 10, 2007 but did not result in withdrawal of the requirement.

2) Applicants filed a petition from the erroneous restriction requirement on June 26, 2008, pointing out that 37 CFR 1.475(b) plainly precludes the restriction requirement that was made in this application. Applicants explicitly requested an explanation of the purpose of Rule 475(b) and why such rule would not apply to national stage applications such as the present application, in the event that the restriction requirement was still deemed proper.

3) The Decision On Petition mailed September 22, 2008 (the "Decision") failed to address the main point of Applicant's petition, that 37 CFR 1.475(b) precludes the restriction requirement made in this application. Instead, the Decision merely reiterated the "special technical feature" consideration set forth in PCT Rule 13.2, which was relied on in the restriction requirement itself. The Decision completely ignored the "unity of invention" rule mandated by 37 CFR § 1.475(b), and the requirement of 37 CFR § 1.499 that unity of invention determinations in national stage applications are to be made under 37 CFR § 1.475, and not under PCT Rule 13.2. The Decision further did not provide any explanation of the purpose or meaning of 37 CFR § 1.475(b) if such rule did not apply to the present situation, or how and under what circumstances 37 CFR § 1.475(b) would be applicable.

PERTINENT AUTHORITIES

37 CFR § 1.475(b) provides *inter alia* that "a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories: (1) A product and a process specially adapted for the manufacture of said product."

37 CFR § 1.499 provides *inter alia* that "[i]f the examiner finds that a national stage application lacks unity of invention under § 1.475, the examiner may in an Office action require the applicant in the response to that action to elect the invention to which the claims shall be restricted."

DISCUSSION

Claims 1-35 and claims 36-39 are related as a product and a process for manufacturing the product respectively. Hence, under the applicable rule, 37 CFR § 1.475(b)(1), the present application must be considered to have unity of invention. In view of this, the restriction requirement is improper as it violates Rule 475(b).

The Decision appears to recognize Applicant's argument in stating that "37 CFR 1.475(b) [provides] a national stage application containing claims to different categories of invention will be considered to have a unity of invention if the claims are drawn only to a product and a process specially adapted to the manufacture of said product." Decision at p. 1.

However, the discussion in the Decision completely ignores the mandate of Rule 475(b), that where a national stage application (such as the present application) contains claims drawn only to a product (here, claims 1-35), and a process specially adapted for the manufacture of said product (here, claims 36-39), then the national stage application will be considered to have unity of invention.

The Decision further failed to take into account the requirement of 37 CFR § 1.499 that unity of invention in a national stage application is to be determined under 37 CFR § 1.475, and not under international PCT Rule 13.2.

In particular, the Decision does not explain why the product claims 1 – 35, and process claims 36 – 39 directed to a process of manufacturing the product of claims 1 - 35, should not be considered to have unity of invention under 37 CFR § 1.475(b). Instead, the Decision merely repeats the allegation of the restriction requirement that the characterized "special technical feature" of the claims does not make a contribution over the prior art, referencing PCT Rule 13.2.

In view of the foregoing, the Director is requested to reconsider the Decision, to vacate the restriction requirement as being in violation of 37 CFR § 1.499 and 37 CFR § 1.475, and to order rejoinder of claims 36-39 with claims 1-35.

Please charge any fee or credit any overpayment pursuant to 37 CFR 1.16 or 1.17 to Novak Druce Deposit Account No. 14-1437.

RESPECTFULLY SUBMITTED,					
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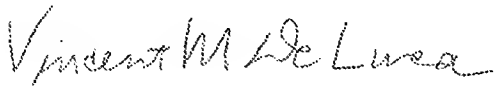
SIGNATURE		DATE	26 September 2008		
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